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prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First

Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I
look forward to answering the Committee's questions.

Brinkley, Winnie

From: Long, Linda E
Sent: Monday, February 05, 2007 1:37 PM
To: Brinkley, Winnie
Subject: Fw: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneysclearedfinal.REV.pdf

-----Original Message-----

From: Scott-Finan, Nancy
To: Sampson, Kyle; Goodling, Monica; Hertling, Richard; Seidel, Rebecca; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Kirsch, Thomas
CC: Long, Linda E
Sent: Mon Feb 05 13:06:25 2007
Subject: FW: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)



ODAGMcNultyTesti
monySJC2-6-07P...

This is a revised statement to reflect Leahy as Chairman of the full Committee and Specter as the RRM.

Cc:Linda for Paul



Department of Justice

STATEMENT

OF

**PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**"PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE—
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?"**

PRESENTED ON

FEBRUARY 6, 2007

DAG000001756

**Testimony
of**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

“Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?”

February 6, 2007

Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation’s laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government’s legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for

confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment

of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district

courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

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Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Brinkley, Winnie

From: Long, Linda E
Sent: Monday, February 05, 2007 11:23 AM
To: Brinkley, Winnie
Subject: Fw: AG QFRS

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: SHCQFRS-011807-USA Atty issues - ODAG.doc

-----Original Message-----

From: Scott-Finan, Nancy
To: Sampson, Kyle; Goodling, Monica; Hertling, Richard; Seidel, Rebecca; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAE0); Nowacki, John (USAE0); Kirsch, Thomas
CC: Long, Linda E
Sent: Mon Feb 05 10:42:31 2007
Subject: FW: AG QFRS

Cc: Linda for Paul

Attached are the written QFRs with regard to the hiring/firing of U.S Attorneys following the Department 1/18/07 oversight hearing at which the Attorney General testified. These were received at the end of last week.

EOUSA has the pen on the QFRs in the email; OAG has the pen on the QFRs in the attachment.



SHCQFRS-011807-
USA Atty Issues...

<<SHCQFRS 011807-USA Atty issues - ODAG.doc>>

Schumer:

11. Some have expressed concern about the level of relevant experience of various top level Department of Justice officials and United States Attorneys around the country. Please answer the following questions to fill in the record on the backgrounds of our most important law enforcement officials:

- a. How many United States Attorneys have been nominated during the Bush Administration to date?
- b. How many of those nominated had any prosecutorial experience before their nominations?
- c. Of those, how many had prosecutorial experience at the local level?
- d. How many had prosecutorial experience at the federal level?

From: Scott-Finan, Nancy
Sent: Monday, February 05, 2007 9:26 AM
To: Wade, Jill C
Subject: RE: AG QFRS

Thank you.

From: Wade, Jill C

Sent: Monday, February 05, 2007 9:21 AM
To: Scott-Finan, Nancy
Subject: RE: AG QFRS

Yes I will get them for you.

From: Scott-Finan, Nancy
Sent: Sunday, February 04, 2007 10:31 PM
To: Seidel, Rebecca; Wade, Jill C; Chambers, Shane P
Subject: AG QFRS

Were there any questions about the USA firings in the AG QFRS that we received last week?
If so, may I have a copy. Thanks.

ODAG QFRS

Jill Wade

LEAHY:

37 "Press reports say that seven or more United States Attorneys have recently announced their resignations, and these reports suggest that you and the Administration have asked them to step down. These include well-regarded prosecutors like Kevin Ryan in San Francisco, who is leading investigations into corporate backdating of employee stock options, and Carole Lam in San Diego, who led the successful Duke Cunningham corruption investigation. These U.S. Attorneys are being replaced under a new provision inserted by the Republican Congress into the PATRIOT Act reauthorization, which allows you to name interim U.S. Attorneys, without any Congressional input or confirmation, who will serve indefinitely.

Why have you asked such a large and unprecedented number of U.S. Attorneys – appointed by this Administration and well-regarded in their communities – to step down?

38 Isn't there a threat to the independence of U.S. Attorneys when groups of them are fired en masse and replaced indefinitely by people of your choosing without any Senate input?

39 Wouldn't a system where interim U.S. Attorneys were appointed by the federal district court – which is how it used to be done – help ensure that qualified and independent prosecutors held the job until a permanent appointee could be confirmed?

SPECTER

119 The McNulty Memo provides that prosecutors may still negatively weigh a corporation's refusal to disclose factual, privileged "Category I" information. Such information includes copies of key documents, witness statements, and reports containing investigative facts documented by counsel. To make such a request, a prosecutor must establish a "legitimate need" for the information and must obtain authorization from the United States Attorney, who must "consult" with the Assistant AG for the Criminal Division. What is the consultation that must take place for the prosecutor to make such a request, and may the request be made even without the Assistant AG's assent?

120 Can the Assistant Attorney General overrule the U.S. Attorney's decision?

ODAG QFRS
Jill Wade

121 Is there a standard for this type of review?

122 May the corporation appeal the DOJ's decision to request the information or its possibly subsequent finding of noncooperation as a result?

KENNEDY:

190 Please provide the employment application or current resume of each individual appointed as an interim United States Attorney during the past two years.

191 What will you do to assure Congress that the removal of Ms. Lam and others is not an effort to terminate uncomfortable public corruption investigations? Will you consider as a principal factor in each interim appointee the ability and willingness of the appointee to pursue public corruption investigations? What abilities and experience do you consider important in a public corruption prosecutor?

197 How many interim United States Attorneys are now serving?

198 Please state the date that each was appointed to his or her current position, and the time that elapsed between the departure of the confirmed United States Attorney and the appointment of the interim United States Attorney.

199 Please state whether a replacement has been nominated for each position and when each replacement nomination was sent to the Senate.

ODAG QFRS

Jill Wade

SCHUMER:

352 "12. Some have recently expressed concern about the possible politicization of the hiring and firing of United States Attorneys.

a. How many United States Attorneys have been asked to resign prior to the ends of their terms? For each, please provide the name, the district, the date of confirmation, the date of resignation or termination, and the name of the proposed replacement.

"

353 b. Do you believe that there is any constitutional infirmity in allowing (as was done prior to the PATRIOT Act change), in certain circumstances, federal judges to make interim appointments of United States Attorneys? If so, please provide a detailed explanation of your constitutional concerns. Are you aware of any legal challenges, prior to 2006, to the method of interim U.S. Attorney appointments. If so, please provide the details of those legal challenges and the resolution of the litigation.



Department of Justice

STATEMENT

OF

**PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**"PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?"**

PRESENTED ON

FEBRUARY 6, 2007

**Testimony
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**Committee on the Judiciary
United States Senate**

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February 6, 2007

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of the Committee, thank you for the invitation to
discuss the importance of the Justice Department’s
United States Attorneys. As a former United States
Attorney, I particularly appreciate this opportunity to
address the critical role U.S. Attorneys play in

enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement

officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

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under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch.

For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for

evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to

the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an

administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006.

Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal

criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim

U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be

appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method

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In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the

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receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act (“VRA”), 5 U.S.C. §

3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year,

signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law

enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the

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Thank you again for the opportunity to testify, and I
look forward to answering the Committee's questions.

Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning and attempt to clear up the misunderstandings and mispersceptions about the recent resignations of some USAs, and to testify in strong opposition to S.214, a bill which would strip the AG of the authority to make interim appointments to fill vacant USA positions.

As you know, I had the privilege of serving as a USA for 4 ½ years. It was the best job I ever had. That's something you hear a lot from former USAs – "Best job I ever had." (In my case, Mr. Chairman, it was even better than serving as counsel on the House Crime Sub. under your leadership.).

Why is being a USA such a great job? There are a variety

of reasons, but I think it boils down to this. The USAs are the President's chief legal representatives in the 94 federal judicial districts. In my former district of Eastern Virginia, Supreme Court Chief Justice John Marshal was the first USA.

Being the President's chief legal representative means you are the face of the Justice Department in your district. Every police chief you support, every victim you comfort, every citizen you inspire or encourage, and, yes, every criminal who is prosecuted in your name, communicates to all of these people something significant about the priorities and values of both the President and the AG. At his innauguration, the President raises his right hand and solemnly swears to faithfully execute the

office of the President of the United States. He fulfills this promise in no small measure through the men and women he appoints as USAs. If the President and the Attorney General want to crack down on gun criminals or go after child pornographers and pedophiles, as this President and AG have ordered federal prosecutors to do, it's the USAs who have the privilege of making such priorities a reality. That's why it's the best job a lawyer can ever have. It's an incredible honor.

And this is why, Mr. Chairman, judges should not appoint USAs, as S.214 proposes. What could be clearer Executive Branch responsibilities than the AG's authority to temporarily appoint and for the President to nominate for Senate

confirmation those who will execute the President's duties of office? S.214 doesn't even allow the AG to make ANY interim appointments, contrary to the law prior to the most recent amendment.

The indisputable fact is that USAs serve at the pleasure of the President. They come and they go for lots of reasons. Of the USAs appointed in my class at the beginning of this Administration, more than half are now gone. Turnover is not unusual and it rarely causes a problem because even though the job of USA is extremely important, the greatest assets of any successful USA are the career men and women who serve as AUSAs, victim-witness coordinators, paralegals, legal

assistants, and administrative personnel. Their experience and professionalism ensures smooth continuity as the USA job transitions from one person to another.

Mr. Chairman, I conclude with these three promises to this Committee and the American people on behalf of the AG and myself:

- 1) We never have and never will seek to remove a USA to interfere with an ongoing investigation or prosecution. Such an act is contrary to the most basic values of our system of justice, the proud legacy of the Department of Justice, and our integrity as public servants.

2) In every single case, where a USA position is vacant, the Administration is committed to filling that position with a USA who is confirmed by the Senate. The AG's appointment authority has not, and will not, be used to circumvent the confirmation process. All accusations in this regard are contrary to the clear factual record. The statistics are all laid out in my written statement.

3) Through temporary appointments and nominations for Senate confirmation, the Administration will continue to fill USA vacancies with men and women who are well qualified to assume the important duties of this

office.

Mr. Chairman, I appreciate your friendship and courtesy,
and I am happy to respond to the Committee's questions.

Long, Linda E

From: Mercer, William W
Sent: Wednesday, February 28, 2007 10:07 AM
To: Long, Linda E
Subject: Fw: Farewell, Adios, Good bye, Auf Weidersehen

Will you print this?

-----Original Message-----

From: Mercer, Bill (USAMT) <Bill.Mercer@usdoj.gov>
To: Mercer, William W
Sent: Tue Feb 27 22:49:47 2007
Subject: FW: Farewell, Adios, Good bye, Auf Weidersehen

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Iglesias, David C. (USANM)
Sent: Tuesday, February 27, 2007 08:00 PM Eastern Standard Time
To: USAEO-USAttorneys
Subject: Farewell, Adios, Good bye, Auf Weidersehen

Dear friends and colleagues:

As King Solomon wrote more than 2,500 years ago, "there is a time for everything." It's time to say goodbye from this wonderful job. Tomorrow will be my last day as U.S. Attorney. It's been the most responsible job I've ever had and the second most exciting job I've ever had (nothing beats being launched off and landing on a Navy aircraft carrier). The years have been an unprecedented mixture of experiences, memories and accomplishments. Beyond the record number of criminal cases my AUSAs brought, I'm proud of my hard-working office and its 95% conviction rate. I'm proud to have successfully prosecuted the biggest political corruption case in New Mexico history. I'm proud of having nationally recognized Weed and Seed and PSN programs. But, it's more than just metrics, it's about forming friendships with many of you. I'll never forget going to Colombia and Mexico with Johnny Sutton, Paul Charlton and the late great Mike Shelby. I'll never forget visiting drug cartel lord Pablo Escobar's home in Medellin and realizing America saved Colombia from becoming the world's first "narcocracy." I'll never forget running in L.A.'s seedy MacArthur Park with Matt Whitaker in the early morning hours. I'll never forget speaking at Main Justice's Great Hall for Hispanic Heritage Month, or testifying before Congress, debating a member of Congress and Village Voice journalist on the Patriot Act, backseating an F-16, or getting an op-ed published on immigration reform in the Washington Times. I'll never forget former A.G. and Mrs. John Ashcroft giving us a walking tour of the Washington monuments at night. Heady stuff for a guy originally from Panama whose family is just one generation removed from subsistence living in the jungle.

As one of just several US Attorneys born outside the United States, I know the America dream lives. I'd like to thank President Bush for nominating me to be the United States Attorney almost 6 years ago. I am grateful to have been allowed the honor of making a difference in my community. We need US Attorneys who "maintain justice and do what is right" (Isaiah 56:1) and are willing to pay the price for doing so.

After taking off the month of March to decompress and performing Navy duty overseas in April, I will begin my new job. I haven't decided which of my options to pursue, but in the interim you can reach me at dciglesias@earthlink.net or I wish you all success in the next 22 months in keeping America safe against all enemies, foreign and domestic.

Respectfully,

David

Henderson, Charles V

Subject: House Judiciary Committee Hearing Prep
Location: Room 4208 RFK

Start: Fri 3/2/2007 11:30 AM
End: Fri 3/2/2007 1:00 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Goodling, Monica; Hertling, Richard; Scott-Finan, Nancy; Roehrkasse, Brian; Nowacki, John (USAEO); Elston, Michael (ODAG)

-William Moschella
-Michael Elston
-Monica Goodling
-Richard Hertling
-Nancy Scott-Finan
-Brian Roehrkasse
-John Nowacki

Henderson, Charles V

Subject: House Judiciary Committee Hearing Prep
Location: ODAG Conference Room 4135

Start: Mon 3/5/2007 11:00 AM
End: Mon 3/5/2007 12:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Mercer, William W; Sampson, Kyle; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scott-Finan, Nancy; Nowacki, John (USAEO); Scolinos, Tasia; Roehrkasse, Brian

Please Note: Changing the time of this meeting to 11:00.

- William Moschella
- William Mercer
- Kyle Sampson
- Michael Elston
- Monica Goodling
- Richard Hertling
- Nancy Scott-Finan
- John Nowacki
- Tasia Scolinos
- Brian Roehrkasse

Henderson, Charles V

Subject: House Judiciary Committee Hearing Prep (continuation)
Location: ODAG Conference Room 4135

Start: Mon 3/5/2007 3:00 PM
End: Mon 3/5/2007 4:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Mercer, William W; Sampson, Kyle; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scott-Finan, Nancy; Nowacki, John (USAEO); Scolinos, Tasia; Roehrkasse, Brian

- William Moschella
- William Mercer
- Kyle Sampson
- Michael Elston
- Monica Goodling
- Richard Hertling
- Nancy Scott-Finan
- John Nowacki
- Tasia Scolinos
- Brian Roehrkasse

Long, Linda E

From: Roehrkasse, Brian
Sent: Monday, March 05, 2007 3:10 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Washington, Tracy T on behalf of Sampson, Kyle
Sent: Monday, March 05, 2007 3:10 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Henderson, Charles V on behalf of Moschella, William
Sent: Monday, March 05, 2007 3:13 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Hertling, Richard
Sent: Monday, March 05, 2007 3:14 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Block, Jonathan on behalf of Scolinos, Tasia
Sent: Monday, March 05, 2007 3:15 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Battle, Michael (USAEO) [MBattle@usa.doj.gov]
Sent: Monday, March 05, 2007 3:21 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: U.S. Attorneys Meeting

Long, Linda E

From: Cabral, Catalina on behalf of Hertling, Richard
Sent: Monday, March 05, 2007 3:48 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Washington, Tracy T on behalf of Sampson, Kyle
Sent: Monday, March 05, 2007 3:48 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Elston, Michael (ODAG)
Sent: Monday, March 05, 2007 3:48 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Hertling, Richard
Sent: Monday, March 05, 2007 3:49 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Walker, Shelia M on behalf of Goodling, Monica
Sent: Monday, March 05, 2007 3:51 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Roehrkas, Brian
Sent: Monday, March 05, 2007 3:52 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Block, Jonathan on behalf of Scolinos, Tasia
Sent: Monday, March 05, 2007 3:55 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Henderson, Charles V on behalf of Moschella, William
Sent: Monday, March 05, 2007 4:00 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Long, Linda E

From: Battle, Michael (USAEO) [MBattle@usa.doj.gov]
Sent: Monday, March 05, 2007 4:16 PM
To: Long, Linda E; Brinkley, Winnie
Subject: Accepted: Updated: U.S. Attorneys Meeting

Henderson, Charles V

Subject: Updated: U.S. Attorneys Meeting
Location: EEOB Room 211

Start: Mon 3/5/2007 5:00 PM
End: Mon 3/5/2007 6:00 PM

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Battle, Michael (USAEO); Hertling, Richard; Scolinos, Tasia; Roehrkaske, Brian

Attendees: Will Moschella, Mike Elston, Kyle Sampson, Monica Goodling, Mike Battle, Richard Hertling, Tasia Scolinos, Brian Roehrkaske

POC: Winnie